

Federal Communications Commission

DA 97-1997

SEP 25 11 58 AM '97

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

Amendment of Section 73.202(b),)

Table of Allotments.)

FM Broadcast Stations.)

(Amelia, Louisiana))

MM Docket No. 97-8

RM-8957

REPORT AND ORDER

(Proceeding Terminated)

Adopted: September 10, 1997

Released: September 19, 1997

By the Chief, Allocations Branch:

1. At the request of Amelia Broadcasting of Louisiana ("petitioner"), the Commission has before it the Notice of Proposed Rule Making, 12 FCC Rcd 674 (1997), proposing the allotment of Channel 249C3 to Amelia, Louisiana, as the community's first local aural transmission service. Petitioner and Rice Capital Broadcasting Company ("Rice Capital") filed supporting comments stating their interest in applying for the channel at Amelia, if allotted. Guaranty Broadcasting Corporation ("Guaranty"), licensee of Station WDGL(FM), Baton Rouge, Louisiana, and Station WBBU(FM), Baker, Louisiana, also filed comments.

2. The Notice questioned the status of Amelia as a community for allotment purposes, and the suitability of the site petitioner has chosen since it is located in a relatively large swampy area. In response to our concerns regarding the status of Amelia as a community, petitioner states that Amelia is a Census Designated Place ("CDP") with a 1990 U.S. Census population of 2,447 persons. It also possesses its own zip code. Petitioner argues that the presence of these factors and particularly the listing of Amelia as a CDP creates a strong presumption of community status, citing East Hemet, Indio, Rancho California, Sun City and Temecula, California, 4 FCC Rcd 7895, 7896, (1989). Petitioner contends that this presumption may only be rebutted where there is no indicia of such elements of community as social, economic or cultural activities. In this case, petitioner claims that the community of Amelia has an abundant indicia of community life, noting that the community was included in a 1992 Economic Census-Retail Trade Report published by the Center for Business & Economic Research, Northeast Louisiana University. Petitioner submits that this economic analysis indicates that Amelia possesses eight retail establishments: two supermarkets/grocery stores, two convenience food stores, one restaurant, two refreshment places and a drug store. Petitioner states that Amelia is a prominent shipbuilding and repair center. Petitioner further argues that if shipyards and retail establishments can be constructed in the area, it is "prima facie" evident that a transmitter can be erected. Furthermore, petitioner states it has actually flown over the community and identified

several areas that would be available for a transmitter. In conclusion, petitioner states that it has amply demonstrated that Amelia is a community supporting a substantial commercial presence and because of the presence of these commercial establishments there must be sufficient dry ground upon which to construct an FM transmitter.

3. Guaranty opposes the allotment of Channel 249C3 at Amelia stating that the proposed allotment could adversely affect Guaranty's anticipated upgrade of Station WBBU(FM) at Baker, Louisiana. It also argues that the proposed station would be located within a geographic area that simply is not suitable for sustaining a radio tower. In support of this, Guaranty provides a USGS 1:250,000 scale map which shows that the area where the suggested station would need to be located falls within a vast marsh or swamp area and is void of any roads. In addition, Guaranty submits a letter from Fred O. Dunham ("Dunham") Marine Fisheries Biologist Project Coordinator with the Louisiana Department of Wildlife and Fisheries. Dunham states the area in question is "almost one hundred percent marsh with small portions of it having swamp and shell middens." In addition, the required radio tower would most likely have to be erected on a barge or other stationary platform. He further notes that any proponent of such a structure would have to obtain several regulatory permits to construct in the area. Dunham states that the proposed tower would be located in an area that is subject to the direct forces of tropical storms and a high volume of low flying aircraft which supports the oil and gas industry. Guaranty argues that in view of Dunham's letter, it is apparent that placing a radio transmitter tower in the area suggested by petitioner is impractical, both economically and operationally.

4. Rice Capital and petitioner filed reply comments stating that Guaranty's opposition based on its future hopes for its station to upgrade are without legal basis for the Commission to refuse to allot the proposed channel to Amelia. Rice Capital argues that petitioner has shown in its comments that a suitable transmitter site could be found for the proposed allotment. Rice Capital also submits a map depicting the area in which a fully spaced transmitter site could be located.

Discussion

5. As stated in the Notice, we requested petitioner to provide a showing demonstrating that a suitable fully spaced area exists to locate a transmitter tower because the site petitioner requested was located in a relatively large swampy area. In this case, our engineering staff has confirmed that the site proposed by petitioner is located in a swampland. Although petitioner states that it has identified several areas that would be available for a transmitter, our engineering analysis indicates that Channel 249C3 at Amelia cannot be site restricted to clear the current licensed site of Station WDGL(FM), Channel 251C, Baton Rouge, Louisiana. Therefore, since we are unable to find a fully spaced site that is not located in swampland, we will deny petitioner's proposal to allot Channel 249C3 at Amelia, Louisiana.

6. Although we do not need to reach a decision regarding community status because of the transmitter site problem, we find that the information provided by petitioner is insufficient to affirmatively find that Amelia is a "community" for allotment purposes. While petitioner states that Amelia is a Census Designated Place "CDP" with a 1990 U.S. Census population of 2,447 persons, this designation alone only give rise to the presumption of community status. It

appears that the residents of Amelia do not receive any municipal local services. There is no local government, police, library, newspaper, churches, social organizations or schools. We note that Amelia has a post office. However, the presence of a post office is not sufficient to establish community status. See Coker, Alabama, 43 RR 2d 190 (1978). While petitioner claims there is commercial activity in Amelia, it has not specifically identified any business or organizations which identify themselves with Amelia or shown that these organizations are intended to serve the needs of community, as opposed to other areas. Commission policy is to reject assertions of community status where a connection has not been shown between political, social and commercial organizations and the community in question. See e.g., Gretna, Florida, 6 FCC Rcd 633 (1991), and cases cited therein.

7. In light of the above, IT IS ORDERED, that the petition for rule making filed by Amelia Broadcasting of Louisiana (RM-8957), IS DENIED.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau